

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1120X

THE STATE OF NEW HAMPSHIRE—ABANDONMENT EXEMPTION—
IN GRAFTON COUNTY, N.H.

Decided: March 13, 2015

The State of New Hampshire (the State) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.97 miles of rail line between milepost B140 (Station 3515+69) and milepost B141 (Station 3568+49) in Lebanon, Grafton County, N.H. (the Line). Notice of the exemption was served and published in the Federal Register on February 12, 2015 (80 Fed. Reg. 7,908).¹ The exemption is scheduled to become effective on March 14, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on February 18, 2015, recommending that two environmental conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the State and CCRC served an historic report on the New Hampshire Division of Historical Resources, the State Historic Preservation Office (SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA also indicated that the SHPO submitted comments stating that it needed additional information to determine whether the proposed abandonment would affect any known archaeological sites or historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register). Therefore, OEA recommended that the State be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 30618 (formerly 16 U.S.C. § 470f), has been completed. OEA also recommended that the State be required to report back to OEA regarding any consultations with the SHPO and the public and be prohibited from filing its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

¹ Claremont Concord Railroad Corporation (CCRC) joined in filing this notice of exemption to obtain Board authorization to discontinue service over the same line. Claremont Concord Railroad Corporation—Discontinuance of Serv. Exemption—in Grafton Cnty., N.H., Docket No. AB 1120 (Sub-No. 1X).

In the EA, OEA noted that the National Geodetic Survey (NGS) had identified one geodetic station marker that may be affected by the proposed abandonment. Accordingly, OEA recommended that the State be required to consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

OEA issued its final EA on March 9, 2015, noting that no comments to the EA were received by the March 4, 2015 due date and recommending that the two previously recommended environmental conditions be imposed. Accordingly, the two conditions recommended by OEA in the EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On March 3, 2015, the City of Lebanon (Proponent) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with the State for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the Proponent has also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on March 11, 2015, the State has indicated its willingness to negotiate with the Proponent for interim trail use.

Because the Proponent's request complies with the requirements of 49 C.F.R. § 1152.29 and the State is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, the State may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The Proponent also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The Proponent asks that the State be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The Proponent's justification for its request is that these structures have considerable value for recreational trail purposes and that the 180-day period is needed to commence negotiations with the State.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-

Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the Proponent has satisfied these requirements, a 180-day public use condition will be imposed, requiring the State to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from March 14, 2015, the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on September 10, 2015, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until September 9, 2015. If a trail use agreement is reached for a portion of the right-of-way prior to September 9, 2015, the State must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, the State is not required to deal exclusively with the Proponent, but may engage in negotiations with other interested persons.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on February 12, 2015, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit Proponent to negotiate with the State for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until September 9, 2015, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption, until September 10, 2015. The abandonment is also subject to the conditions that Proponent shall: (1)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-

way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA, has been completed, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition; and (2) consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, the State may discontinue service and salvage track and related materials. The State shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until September 10, 2015, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by September 9, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, the State may fully abandon the Line.

9. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.